Examiners' Report
Lead Examiner Feedback

June 2022

Pearson BTEC Level 3 Nationals in Applied Law

Unit 1: Dispute Solving in Civil Law (20168K)

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Grade Boundaries

What is a grade boundary?

A grade boundary is where we set the level of achievement required to obtain a certain grade for the externally assessed unit. We set grade boundaries for each grade, at Distinction, Merit and Pass.

Setting grade boundaries

When we set grade boundaries, we look at the performance of every learner who took the external assessment. When we can see the full picture of performance, our experts are then able to decide where best to place the grade boundaries – this means that they decide what the lowest possible mark is for a particular grade.

When our experts set the grade boundaries, they make sure that learners receive grades which reflect their ability. Awarding grade boundaries is conducted to ensure learners achieve the grade they deserve to achieve, irrespective of variation in the external assessment.

Variations in external assessments

Each external assessment we set asks different questions and may assess different parts of the unit content outlined in the specification. It would be unfair to learners if we set the same grade boundaries for each assessment, because then it would not take accessibility into account.

Grade boundaries for this, and all other papers, are on the website via this link:
http://qualifications.pearson.com/en/support/support-topics/results-certification/grade-boundaries.html

Awarding BTEC qualifications in 2022

Ofqual has set out their plans for awarding qualifications in 2022 and intend to return to a normal, pre-pandemic, approach to grading standards over by 2023. They have confirmed that 2022 will be a transition year, to reflect that we are in a pandemic recovery period and students' education has been disrupted.

Our guiding principle and approach to awarding BTEC qualification results in 2022 will be to ensure parity in relation to the approach being taken for GCSE and A level learners. BTEC courses have a different structure and design to academic qualifications - BTECs are modular qualifications (with assessments taking place throughout the course) compared to GCSEs and A levels which are linear (assessed and awarded at the same time at the end of the year), and therefore our approach needs to be different.

In 2022 we will return to the usual method of calculating BTEC qualification results, however adaptations including, U-TAGs and reduced internal assessment, are in place to provide a comprehensive package of support for students.

The basis of our awarding approach to BTECs this year is to ensure it is as fair as possible for all learners. We will use a range of evidence to set grade boundaries for the external units. Part of this evidence will be to closely monitor learner performance in all assessments that contribute to learners' final qualification grade, to ensure parity with A level and GCSEs.

Further information can be found on our website and via our Social Media channels.

Unit 1 (20168K) – Dispute Solving in Civil Law

Grade	Unclassified	Level 3			
		N	P	M	D
Boundary Mark	**0**	**7**	**14**	**25**	**36**

Introduction

This was a buoyant session with over 4000 entries. Three-quarters of the cohort were new learners and a quarter were resit learners. This was the first summer sitting since the increased cohort size and the interrupted summer sittings due to Covid. This was, like 2201, a cohort who have had very varied, interrupted and challenging educational experiences due to the pandemic and this will have direct and indirect impacts on the learners.

Unit 1 forms one of two mandatory units for the Certificate and one of three mandatory units for the Extended Certificate. It contributes 50% of the available marks required for the Certificate.

The assessment followed a now well-established format. In preparing for the assessment, learners will have benefited from making use of the 1806, 1901, 1906, 2001, 2101 & 2201 past papers, mark schemes and LE Reports. Furthermore, Pearson have made a variety of other support materials available. These include the specification, delivery guides, the administrative support guide, on-line and (when appropriate) face-to-face training sessions as well as two sets of specimen assessment materials, a set of exemplar responses with accompanying examiner commentaries and the new BTEC Law Journal which features updates on key issues.

In Unit 1 learners cover the civil justice system including the civil courts, the track system and alternative methods of dispute resolution and sources of both funding and advice. They also study precedent and the law of negligence. Learners also develop legal skills in research and will use these skills to investigate the way in which precedent might apply to negligence in a given situation by constructing liability and considering potential remedies. Lastly, candidates learn how to reference legal sources and how to communicate professionally with colleagues and clients.

Unit 1 is assessed twice yearly in January and May. The assessment is based on two key events. Firstly, the pre-release of the 'Part A' materials followed a week later by further information and the assessment itself in 'Part B'. The 'Part A' pre-release materials contain legal resources which act as a research catalyst ahead of the 'Part B' assessment. Learners have up to 6 hours during the period between 'Part A' and 'Part B' to undertake their research and produce, individually, up to two sides of A4 notes of legal authorities considered relevant in the light of the 'Part A' information. Learners will be allowed to take these notes into the 'Part B' controlled assessment.

The 'Part B' assessment is a 1 hour and 30-minute session taken under supervised and controlled conditions (please refer to the Administrative Support Guide) during a timetabled session on a date set by Pearson. The assessment consists of two discrete tasks each worth 30 marks. Learners should be encouraged to split their time equally between the two tasks. Task 1 consists of a file note and Task 2 is

a client letter. Each task is worth 30 marks and the assessment objectives are as follows:

BTEC Applied Law: Unit 1: Assessment Objectives
AO1 Selection and understanding of legal principles relevant to context (**10**)
AO2 Application of legal principles to facts, analysis of arguments and evaluation of legal principles and arguments to reach conclusions (**16**)
AO3 Presentation and structure **(4)**
Total: (30)

During the 'Part B' controlled assessment, learners are required to produce their work using a computer. The two tasks along with a learner declaration of authenticity are then submitted along with a learner record sheet. A number of centres submitted work without including signed authentication sheets, registers and/or learner record sheets and it should be noted that this can lead to delays in marking.

Introduction to the Overall Performance of the Unit

The overall performance during this session was very similar to 2201 and the grade boundaries reflect this. This is reassuring as it confirms the consistency of the standard of the paper and its assessment and that the impacts we noticed on the 2201 paper remain consistent as you would expect.

Making progress on Unit 1

The consistency of the 2201 and 2206 performances disclose two key areas where centres can make progress and improve outcomes for their learners:

1 AO1 – ensuring that learners are referencing up-to-date law is one of the easiest ways to improve AO1 performance on Activity 1 by 20%. Learners are still referring to the three-part Caparo test and not the Robinson approach. This has two impacts: firstly, learners are losing marks for not using the correct law, and secondly, learners are wasting a great deal of time setting out irrelevant law and consequently they then run short of time which they could spend gaining credit later in the assessment.

In addition, there is a persistent and ubiquitous practice when it comes to the AO1 on both tasks which relies on a 'shot-gun' approach. Both tasks are application tasks. Task 1 applies the law in order to construct liability where task 2 applies the law in order to advise a client. The AO1 should be selective and specific to supporting that application. However, learners are being taught to treat the AO1 element of both tasks as an essay where they give an exhaustive and detailed account of all the law both relevant and irrelevant. Whilst the marking methodology ensures learners gain appropriate credit for relevant AO1, learners are wasting time writing out irrelevant AO1 and not focusing their time and energy on the AO2 where there are more marks to be gained.

2 AO2 – building learner's application skills is the single greatest opportunity to improve learner outcomes. Please see below for a topic-by-topic account of this as it is more prevalent in some areas than others. However, in general, application in task 1 often lacks evidence of any sound reasoning which links legal principles to the facts to produce an outcome and, in task 2 it is often not focused on advice for the client and more generic and discursive in nature.

Other issues in 2206

Task 1

Irrelevant material – task 1 is not an essay. It involves constructing liability as it relates to a particular claimant. Information which is irrelevant to the client and the scenario will gain no credit. This session, this included the Caparo test, Donoghue v Stevenson, the standard of care for professionals and children, all the risk factors except special characteristics, a range of irrelevant causation issues, the thin-skull rule and contributory negligence.

Cases – in almost all instances, there is no need to explain the facts of cases, especially cases which set out broad (but irrelevant) principles such as Donoghue v Stevenson. The exception to this might be where the facts of a case can be used to draw a direct comparison with the scenario such that the principle from the case must therefore apply to the scenario. During this session this might have applied to Walker v Northumberland CC and Tariq's case.

Task 2

Authorities – task 2 is a client letter and the content should reflect this. Learners can score full marks without a single case or statute. Where appropriate, authorities will be credited but their prolific use is not required or appropriate. Some centres are preparing learners to use an extensive range of authorities. Most notably, cases being used in damages and statute for legal aid and civil justice. These authorities are generic and are not appropriate to a client letter unless they are specific to the question.

Irrelevant material – learners will not gain credit for material which is not relevant to the particular question. It might be perfectly accurate information but if it is not required by the rubric, it will not be credited. Examples from this session include costs and expenses, ombudsmen and civil appeals. This also extends to drilling down into areas of technical detail that is not appropriate to the audience for a client letter such as how the multiplicand works when calculating damages or references to professional compensation tables.

Abstract and generic evaluation – task 2 is a client letter not an essay. The use of generic evaluation which is not linked to the client's case will only gain limited credit. This is seen most commonly in ADR responses where learners discuss the legitimate advantages and disadvantages of ADR but do not relate them to the client's case.

Persistent issues

In spite of numerous references in previous reports we are still seeing some entrenched activity which is detrimental to learner performance. The most common issues are:

- Putting task 1 material in task 2 and *vice versa*. The most common example is mixing up (causation of) damage (task 1) and damage***s*** (task 2). We frequently see damages dealt with in task 1. The two terms being one letter different probably doesn't help and it may be beneficial to refer to damage as causation instead.

- Speculating about things that are not mentioned or supported in the Part B pre-release materials. If there is no reference to suggest they might be important, please advise learners they do not need to consider children or professionals as defendants, unsupported risk factors, contributory negligence, *res ipsa loquitur*, multiple and successive causes, the thin-skull (or egg-shell skull) rule and intervening acts.

- Linked to the last point is the issue that contributory negligence is not part of the specification for task 1 and would only ever be relevant as part of damages in task 2, never as any part of task 1.

- Using criminal cases instead of civil cases especially in causation (e.g R v White, R v Pagett).

- In task 2 we frequently see the inclusion of material which is irrelevant to the task (a client letter) such as contributory negligence, mitigation of loss, the technical method of calculating damages, use of what are sometimes quite detailed and multiple authorities, detailed references to costs and expenses and details of the civil justice system that are not relevant to the question such as allocation procedures, the role of judges and civil appeals.

- There seems to be an entrenched idea that the different types of ADR are specific or exclusive to certain types of case. For example, that mediation is only for family matters, conciliation is only for employment disputes and arbitration exclusively for commercial matters. This is wrong. One of the consequences is that learners are ruling out types of ADR that would be appropriate and creditworthy because they believe they don't fit the case. So, for example, learners will say 'Tariq could try mediation but this is only for family matters not personal injury' – which is incorrect.

Individual Questions

Question 1 (File Notes)

This question required learners to construct liability in negligence based on a scenario involving Tariq. The case was very similar to the source case so that any learner who had familiarised themselves with the Walker case in Part A would have been well prepared to tackle the question. There are 10 marks of AO1 and 16 marks of AO2 which are divided into 5 equal areas: duty of care, breach (the objective standard), breach (the risk factor of special characteristics), factual causation and legal causation plus a conclusion.

Duty of care
Under the Robinson approach, where there is an existing precedent for a duty of care, then this should be applied. In a novel situation, the Caparo incremental approach should be used. Tariq's circumstances are not in the least novel. He is an employee and Midshire Airport is his employer. An employer/employee relationship a very well-established duty situation and this would have been satisfactory using an employment case or a relevant statute like the Health & Safety at Work Act. Taking the particular circumstances of the case into account, the similarity to Walker means that if a duty were held in that case, then a duty would also be held in Tariq's case.

Some learners simply applied the Caparo three-stage test as a matter of standard practice and gained no credit as this is wrong. Some learners were determined to use the Caparo three-stage test and asserted that this was a novel case which justified the use of Caparo even though there was nothing novel about the case and no learner put forward any legitimate novelty. Many learners simply covered everything from Donoghue, through Caparo to Robinson which wasted a great deal of time. Some learners simply and correctly applied Robinson and got full marks for a few lines of work where others spent a side or more of A4 going through Donoghue and Caparo and gain no marks. A few learners used the Health & Safety at Work Act.

Right way to establish a duty of care:

Task 1

According to the Robinson case there is a duty of care if there is a precident or statute already and then you must apply it. Our scenario involving Tariq involves a heavy workload which gave him a nervous breakdown. The existing precident of Walker v Northumberland County council established that employers owe a duty of care to employees and this can include a duty not to cause psychiatric injury. This is similar to our case as these cases are similar a duty of care can be established due to both cases having similar facts.

Comment: this would score full AO1 and AO2 marks as there is the legal principle (with the case cited) and the application includes the legal principle, a link to the facts and a conclusion.

Wrong way to establish a duty of care:

Activity 1

In order for a successful claim of negligence to be made it must be proven that a standard of care was owed to a claimant by the defendant. Multiple tests have been e whether a person owes or is owed a duty of care. Firstly, was the neighbour principal set out in Donoghue v Stevenson and states that "one must take reasonable care to avoid acts or omissions that could reasonably be foreseen as likely to injure one's neighbour." However, this principal was found to be too broad in the case of Caparo v Dickman where a three stage test was instead implemented. Firstly, the harm must been reasonably foreseeable. Secondly there must have been a relationship of proximity and lastly it must be deemed fair just and reasonable to impose a duty of care.

Stage 1 of the Caparo test asks whether the harm was reasonably foreseeable, reasonable foreseeability was defined in Bourhill v young as "whether a reasonable person could foresee the damage or injury would be caused to another person by his Act or omission."

In Tariq's case it is reasonably foreseeable that the stress of being an Air traffic controller may have caused damage to Tariq's mental health.

Sufficient Proximity dictates that there must be a relationship of sufficient proximity or closeness between the claimant and the defendant as set out in Grant v Australian Knitting Mills.

In this case the fact the defendant works fork for the defendant means there is a relationship of sufficient proximity between them.

Lastly the courts must look at whether or not it is fair, just and reasonable for them to impose a duty of care. This means considering whether the negligence benefitted society as a whole or if allowing the claim would open the floodgates for an unreasonable amount of other claims.

In this scenario the negligent acts of Tariq's employers in no way benefitted society and in fact increased the risk of harm to the general public.

Comment: this response would score no marks as the AO1 is wrong and the application cannot be credited since it is based on inappropriate law.

Breach of duty – the objective standard

Learners were required to set out the legal principle, that a breach is based on an objective standard, and then apply this to the scenario. This required recognition that Midshire Airport needed to fall below the standard of the reasonable employer or, as some learners put it 'the reasonable airport'. There was plenty of factual evidence in the Part B source materials that could be used to support this. Most learners got this part right but some learners seemed to

think that it was necessary to consider Midshire Airport as a 'professional' or they got confused and considered Tariq as a professional even though he was not the defendant. Some learners insisted on going through the standard of care for learners and children, even though they obviously had no relevance.

Example of establishing breach:

> Secondly, it must be proved that the defendant breached their duty of care. To do this we use the reasonable man test which was first established in the binding precedent of Blyth v Birmingham Water Works where it was stated that the defendant must be compared to the reasonable man. It was then developed by the case of Wells v Cooper where it states the defendant will be compared to the reasonable man performing the same task. Midshire Airport will be compared to the reasonably competent boss dealing with their employee having a nervous breakdown. The reasonable man would not fall back on the agreement that their employee would have reduced workload or would not have taken action to improve their employee's mental wellbeing. Midshire airport have not performed up to the standards of the reasonable man. Therefore, Midshire airport have breached their duty of care.

Comment: here you can see that the learner has set out and explained the reasonable man test supported by Blyth and this scores full AO1 marks. The candidate then does three things with their application: 1. Sets out the relevant legal principle (that Midshire will be compared to a similar employer), 2. Links this to the factual evidence of the breach on Midshire's part (that Midhsire have not reduced Tariq's workload and have fallen back on their agreement), and 3. Drawn the right conclusion (that Midshire has not performed to the standard of the reasonable man and have breached their duty).

Breach of duty – the risk factors

There was a very clear and obvious risk factor here which was flagged in the Part A pre-release materials. This was the special characteristics factor as set out in Paris v Stepney and in the source case of Walker v Northumberland CC. Many learners went through all the risk factors and tried to force the facts to fit those which were not relevant but covered special characteristics in doing so. The most able candidates recognised the significance of special characteristics and focused solely on this point. Learners needed to explain how special characteristics work and provide a case in support for the AO1 and then apply it to the scenario for the AO2. There was plenty of supporting evidence to support the application of this point in the source. One of the key issues with risk factors is learners failing to draw a distinction between things that constitute the actual breach itself and the effect of risk factors which is to alter the standard of care.

Example of establishing the risk factor:

> We must now discuss risk factors. Risk factors affect the standard of care. In the binding precedent of Paris v Stepney, it was stated that the employer owes a higher standard of care to those with special characteristics and must take more precautions in order to protect them. Tariq had special characteristics as he was already signed off sick by his doctor for three months. When he returned to work Midshire airport did not increase the standard of care.

Comment: Here the candidate sets out the legal principle by reference to Paris v Stepney (cited) for full AO1 marks. The learner then sets out the factual observation that Tariq had special characteristics and that Midshire failed to raise the standard of care which should have been increased.

Causation

This part of task 1 was generally done quite well. As stated above, there was some incidence of irrelevant material such as intervening acts and multiple and successive causes but we mark positively and reward correct material and disregard irrelevant material as the example below demonstrates.

For factual causation learners needed to explain the 'but for' test supported by a relevant authority for the AO1 and apply it correctly to Tariq for the AO2. A significant minority lost marks because they didn't 'explain' the test. It is not sufficient to simply 'name-check' the test without explaining how it operates. The application required the learner to link the test to the facts and draw an appropriate conclusion. Many learners did this very neatly by framing it as a question and response as seen below.

Learners need to explain legal causation by reference to the concepts of remoteness and/or reasonable foresight and cite an appropriate supporting authority for the AO1. For the AO2 they needed to apply the principle to the scenario and draw a relevant conclusion.

Example of establishing causation:

> Finally, it must be proven that the defendant caused the damage to Tariq. Two tests are used to establish damage. The first test is factual causation and this comes from the case of Barnett v Chelsea and Kensington hospital. This case established 'but for the breach of duty by the defendant would the claimant have suffered damage'. In our scenario this would be 'but for Midshire airport failing to reduce Tariq's workload when the risk is known, would Tariq have suffered a nervous breakdown'. The answer to this would be no, therefore Midshire airport are a factual cause of Tariq's damage. Next interviening acts from Knightley v johns need to be considered. These are acts which break the chain of causation and become the new factual cause. However none apply here. The next test that needs to be applied is the remoteness of damage test from wagon mound. This si where it's asked whether the damage is reasonably foreseeable or whether it's to remote from the defendants breach. It's reasonably foreseeable that if an employees workload isn't reduced when it's been warned to be a safety risk that it will cause personal injury to that employee. Therefore, it can be established that Midshire airports caused the damage to Tariq.

Comment: Here you can see the learner has set out the 'but for' test with a supporting authority and, importantly, has explained the test in abstract. They have then applied the test by posing the 'but for' question (legal principle), answering it (by linking it to the facts) and drawing a conclusion (they are the factual cause of Tariq's damage). Note the disregarded (irrelevant) reference to intervening acts which the learner has raised and dismissed. For legal causation, there is a good clear explanation and the source (Wagon Mound) is cited in support for the AO1. The test is then applied by reference to the principle ('*it's reasonably foreseeable*' etc), linked to the facts (foreseeable because of Midshire's failure to reduce Tariq's workload) and drawn a conclusion ('*therefore Midshire caused*' etc)

Other Issues

Common AO2 issue:
Some learners are missing AO2 marks because their application is not sufficiently developed. To gain full marks learners should be citing the relevant legal rule or principle, applying it to the given facts and drawing a justified (and correct) conclusion. The two most common reasons for not scoring full marks are not drawing conclusions (or believing them to be implied or obvious), and not linking up with the relevant facts from the scenario.

Not making use of the 'Part A' pre-release materials
Many learners made no use of (or reference to) the Part A pre-release case. As stated above, this may deny learners full marks.

Assessment focus three:
This assessment focus relates to the quality of the presentation and structure and remains unchanged. It is not an assessment of the quality of spelling, punctuation or grammar. Broadly speaking it works in this way:

- A **complete** task which is effective (**4**) marks*
- An **incomplete** task where the content which is there is effective (**3**) marks
- An **ineffective** task – this will typically be where the learner has provided law and/or legal application but it is presented in a format which may only pick up one or two issues and/or would be confusing to the reader and is, therefore, ineffective (**2**) marks
- An **anecdotal** response – this is where the learner has engaged with the task and attempted to respond to the question but in an entirely anecdotal (i.e. without any reference to the relevant law) manner (**1**) mark

*Learners will need to have at least 'attempted' **all five** parts of the task to score (4) marks (i.e. they need not all be right as long as they have all been attempted).

Question 2 (Client Letter)

The client letter offers learners an opportunity to gain credit in a more vocational context than the file note. The file note demands an understanding of substantive law and its application where the client letter has a more practical and accessible focus. There are five key areas as set out in the task rubric:

> Prepare a solicitor's letter that shows your understanding of:
> • the likely **damages** Tariq could expect if he is successful
> • the ways the claim could be **funded** and alternative sources of **advice**
> • the use of **Alternative Dispute Resolution** instead of using the appropriate **civil court** for Tariq's case.

There are three key areas where learners could improve their performance on the client letter task:

- Firstly, damages has taken on an importance beyond its value. Each of the five key areas in task 2 is weighted equally. In spite of this, it is very common for learners to spend far more time and effort on damages than the other four components – often to the detriment of their wider performance because of the timing issues it causes. There is some justification in the sense that the facts often provide more support for the damages element but not to the extent we are seeing. Please refer to the example provided below for guidance on the degree of effort that would attract full marks.

- Secondly, AO2 scores could be improved by working on producing developed and client-focused application. Application is often missing, implied or offered as a series of simplistic and obvious statements or it is generic and discursively evaluative in nature rather than applied and tailored to the client. In the case of the latter, there is often a lack of structure. We have recently published an article covering how to develop AO2 for Unit 1 which includes worked exemplars and learners would benefit from making use of these.

- Thirdly, learners are using a pre-learned template approach to this task. This is commonly seen where, for example, learners frame their answer '*there are six sources of advice*' or '*there are seven forms of funding*' which they then go on to describe or list. This means they lack detail because they are covering breadth over depth and are often simply listed or baldly stated (no credit) rather than explained. It also means they are not targeted to the scenario other than by accident.

Damages

This part of task 2 required a description of the relevant heads of damage for the AO1 and the application of their relevance to Tariq's case for the AO2. The anticipation is that learners will use some or all of the information in the source to provide a framework for the response. There is no need to speculate about things he could 'potentially' claim for. If there is no direct support in the source, it is not required. There is no need to explain how the damages will be paid (although this was credited where relevant), there is no need to explain (in abstract) the processes used to calculate damages and there is no need to include authorities since none of these are appropriate to the audience. It is a client letter and the client primarily wants to know what they might be entitled to – not a legal explanation of how and why.

In this instance, there was sufficient material to support some advice about loss of pre-trial earnings, post-trial earnings and loss of amenity for the mental health issues. There were some actual figures included in Part B to allow learners to engage with the application in a practical manner.

Damages example:

Damages

Dear Mr Tariq

There are two main types of damage. Special damages cover things like loss of earnings up to the date of the trial and medical costs. General damages cover things like loss of future earnings and loss of amenity which is what aims to compensate you for loss of enjoyment of life or your inability to perform tasks you could do before. In your case you can get special damages for your loss of pre-trial earnings. Based on the information you have given me, this will include the earnings from your air traffic job (£50,000 less your benefit payments (£2,600)) and your lost musician earnings (£6000) which means I estimate you should expect £53,400. You can also get general damages to cover your loss of future earnings which may be quite a lot since you have lost a high paid career which you don't look likely to go back to, and loss of amenity damages for the mental health issues which are affecting your confidence and how this affects your lifestyle.

Comment: We are seeing some learners writing a side-and-a-half on damages. Here, the candidate has done more than enough to score full marks in a single paragraph. There are clear (client appropriate) explanations of general damages, special damages, and loss of amenity for the AO1. The calculation of the special damages shows a well-developed point in the way that it uses two pieces of source information and links them together with the knowledge of special damages in order to reach a conclusive piece of client advice for the AO2.

Advice

It was pleasing to see many learners picking up on the fact that Tariq was in a union and pointing them out as a source of advice who would have particular expertise and understanding. On the whole, learners did well on the AO1 where the most common reason for losing marks was listing 'bald' sources of advice and not explaining them. We were not looking for detailed or technical explanations, just something a client would understand. However, a significant minority simply provided a list. At the other end of the scale, we had a number of learners who provided exhaustive and detailed lists of sources of advice. These learners often seemed to have a definitive idea of how many sources of advice there were and simply regurgitated a pre-learned list. The AO2 was less well executed with responses rarely explaining why a particular source would be suitable or beneficial and failing to tailor their recommendation to the client.

A number of learners seem to get advice and funding mixed up. This is especially the case where, as was the case in this paper, you might get advice and funding from the same source (a trade union). Provided this was explained accurately, we credited trade unions appropriately in each context.

Advice example:

> A useful source of legal advice is trade unions. They provide free advice to their members and have their own experts and lawyers who specialise in employment law. I see you are a member of a union Mr Aziz and I would advice you to use them as they are free and, in your case, they know about you and your case as well as what your employer is like and this will help you get the best advice.

Comment: this response easily scores full AO1 marks as there is a clear explanation of a trade union as a source of advice. The AO2 gets full marks as it takes information from the source (Tariq's membership of a union), ties it to a source of advice explaining why it is appropriate and uses this to draw a conclusive piece of client advice.

Funding

This part of task 2 was very much like advice (above) and similar criticisms apply (lists of bald points and exhaustive lists of a specific number of items). Also, as above, there were a few learners who mixed up advice and funding. On the whole, most learners did well on AO1. The AO2 was done less well despite there being the fairly obvious CFA option with all PI cases as well as the option of using the trade union. There was a great deal of speculation about what Tariq might be able to afford based on him being well resourced because he had a well-paid job, or being poorly resourced because he now relies on benefits. It is generally good advice not to speculate too much.

Funding example:

A conditional fee arrangement is called a no win no fee deal. It is where you find a solicitor to take your case on under a deal where they only get paid if they win and you don't pay anything yourself. They are good for personal injury cases because you don't get legal aid for this. I advise you to look for a no win no fee deal tariq, this is because you don't have to risk your own money and the solicitor will work hard for you as they won't get paid otherwise plus I have looked at similar cases to yours and I am confident you will win.

Comment: this response would get full marks for the AO1. It is not a detailed or technical explanation and doesn't mention the implications of losing or insurance but it is client appropriate and accurate. Again, the AO2 is brief but it takes source facts (Tariq's situation looks like a low-risk case), connects it with the legal principle (that he won't have to risk his own money) and uses this to offer reasoned client advice (Tariq should look for a CFA).

Civil Court

This is the most commonly missed point on task 2. Where it is included it tends to be purely AO1 or AO2 but rarely covers both. The rubric asks about the appropriate civil court so this really only extends to the court and the track (hence 'appropriate'). There has been a recent trend in a few responses where the learners are going beyond the scope of the question (e.g. going into types of judge and appeals) or giving inappropriate detail (e.g. details on costs and the allocation to track procedures) and this will not gain credit. However, what is actually required for the AO1 is some generic description of the two civil courts and the three tracks. For the AO2 the learner needs to advise the client which track and court will be appropriate and, importantly, why.

Civil court example:

The civil court system works on a track system. The small track is for cases with low money values of under £10,000 or £1,000 if its personal injury. The fast track is for £10,000 to £25,000 and the multitrack is for over £25000 or complicated law cases. The small claims and cheper fast track cases are trialed in the county court and the bigger cases go to the high court. Mr Tariq you case it for a lot of money as I told you and it will also need an expert judge to work out your complicated damages about the future so yours case will need to go to the multitrack and will be trailed in the high court with a specilased judge.

Comment: This example includes a description of the tracks by reference to the financial claim values and the courts by reference to their financial jurisdiction for full AO1 marks. The learner explains which track (and why), which court (and why) and then links facts provided with the legal information explained in the AO1, using this to accurately advise Tariq for full AO2 marks.

ADR

Along with damages, this is usually the most comprehensively and enthusiastically answered part of task 2. Learner will usually score well on the AO1 and the most common reason for not doing so would be bald lists of types of ADR which are not explained. Because it's generally the last part of the task, it will be more common for ADR to be missed or evidently rushed because of timing issues. Indeed, some learners make this clear on their scripts. In this regard, note should be taken of the comments made above about the breadth and depth of responses.

Once again, it is not necessary to go through every form of ADR. Full AO1 marks can be gained by choosing the form of ADR that seems most suitable and describing that. Full AO2 marks are relatively uncommon for two main reasons: firstly, learners provide generic essay style evaluation (e.g. advantages & disadvantages of ADR) which is not linked to a particular type of ADR – this is not creditworthy since it is not addressing the question 'for Tariq's case'. You would not advise a client about something in general, you would advise a particular type; secondly, learners offer legitimate but general evaluation that is specific to the type of ADR but do not link it to the source facts and use that to advise the client.

ADR example:

> ADR is resolving a dispute without going to a civil court. A type which is commonly used in employment cases is conciliation where an expert acts as an impartial third party to help the two sides come to an agreement. An employment one is called the ACAS. In your case tariq, I would advise you try the ACAS. This is because the third party will be an employment law expert and will have the knowledge to give you an effective decision. It doesn't bind the airport and they might not stick to it but you can still take them to court.

Comment: Here the learner has opted for conciliation which is probably the most appropriate. They have clearly remembered ACAS as an example and recognised its suitability here. The learner easily scores full AO1 marks for an accurate description of conciliation and (although not necessary for full marks), has provided an example (ACAS). The AO2 is also more than enough for full marks. It starts with the client advice (Tariq should use conciliation) and then explains why (because the use of an employment law expert will make this a more effective choice) and protects the client by offering some cautionary advice and reassurance (what to do if Midshire don't pay).

Summary

LE Recommendations:

Be selective

- Do not use a 'shot-gun' approach on task 1 by going through a pre-learned exhaustive list of potential AO1 content – explain only what is relevant to the scenario
- Similarly on task 2, do not explain exhaustive accounts of damages or go through multiple examples of advice, funding and types of ADR

Scope

- For AO1, there are no marks for bald lists of things. Explanations may be short but you must have one – applies to both tasks
- Learner responses can only be credited as either AO1 or AO2 but not both as this would be double credit. Make sure you both explain (AO1) *and* apply (AO2). This is especially the case on civil courts in task 2 and the 'but for' test in task 1 – both areas where learners frequently drop marks

Make sure your law is up-to-date and appropriate

- Refer to the article on Robinson in the BTEC Applied Law Journal if you are unclear about that case and/or Caparo
- You do not need any authorities in task 2 (although we will credit where appropriate) and can score full marks without them

Use the new training materials

- The new model answer materials include worked examples of responses to both tasks which would score full marks in under a side of A4. These provide valuable guidance on breadth and depth
- The 'developing AO2 skills' materials include useful advice on how to improve learners' AO2 skills and features worked and explained model examples

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